



## AGREEMENT FOR PURCHASE OF ORCA BUSINESS CARDS AND ORCA BUSINESS CHOICE PRODUCTS

This Agreement represents the second step in the two-step process to establish an ORCA Business Choice Account for a business, governmental agency, school or other entity. Step One of this process includes reading the program terms detailed in this Agreement on the [www.ORCAcard.biz](http://www.ORCAcard.biz) website and clicking "I Agree" on that website. It also includes filling out the on-line Business Account application via that website. Receipt of this Agreement for signature and the attached schedule of prices (Attachment 1), means that your on-line application has been approved. Upon receipt of this signed Agreement, your Lead Agency will activate your online Business Account.

### 1. Authority.

I am at least 21 years of age; am authorized to enter into this Business Choice Agreement ("Agreement") on behalf of the entity named as the "Business Account" in the application; and by my signature below, I agree on behalf of the Named Business Account to the following terms.

### 2. Contents of Agreement and Parties.

- a. This Agreement, in addition to its terms, includes the (a) the application submitted by the Named Business Account; and (b) the Terms of Use, and the Privacy Statement, incorporated herein by reference in Section 14. Unless modified or terminated as set forth below, this Agreement shall remain in effect and apply to the Named Business Account's purchase and use of "ORCA Services" which include the purchase and use of ORCA Business Cards, the purchase and use of Business Choice products loaded on such cards, and the Named Business Account's access to and use of the ORCA websites, reports and other information.
- b. The Named Business Account understands and agrees that each order for cards and/or products that it submits and any other use of ORCA Services will be subject to the Agreement and prices in effect at the time of the order or use. The Named Business Account is responsible for reviewing the prices and fare information available from the Lead Agency before submitting each order; and shall be deemed to have agreed to pay the amount(s) displayed in the website order process by the act of submitting an order.
- c. The Named Business Account is the entity you specify in your application that will be bound by the Agreement. The following public transportation agencies operating services in the region are



herein referred to as the "ORCA Agencies."

The Snohomish County Public Transportation Benefit Area ("Community Transit")

The City of Everett ("Everett Transit")

King County ("King County Metro")

The Kitsap County Public Transportation Benefit Area ("Kitsap Transit")

The Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit")

The Central Puget Sound Regional Transit Authority ("Sound Transit")

The State of Washington acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

- d. The Lead Agency is the ORCA Agency designated to act on behalf of the others in entering into the Agreement with the Named Business Account.

### **3. Changes to Agreement.**

- a. The Named Business Account understands and agrees that this Agreement and the prices of ORCA products may be changed from time to time by the Lead Agency sending an email notice of the new provisions to the Named Business Account, at least thirty (30) days in advance of their taking effect. An email sent to the address last provided by the Named Business Account shall be deemed sufficient notice. Each order for cards and/or products submitted by the Named Business Account and any other use of ORCA Services will be subject to the provisions of the Agreement and the prices in effect at the time of the order or other use of ORCA Services. The Named Business Account is responsible for reviewing the provisions of the Agreement and prices in effect before submitting each order or making other use of ORCA Services and shall be deemed to have agreed to the then-applicable terms and prices by submitting the order or making other use of ORCA Services.
- b. The Named Business Account shall immediately notify the Lead Agency of any changes to its contact information and any other information provided in its application. An email sent by the Lead Agency shall be sufficient notice to the Named Business Account if sent to the last person and address provided by the Named Business Account.

### **4. Payment in Advance.**

The Named Business Account shall make payment in full prior to the Lead Agency fulfilling an order for ORCA Business Cards and/or Business Choice products, unless other payment terms are agreed upon by the Lead Agency. If for any reason payment in full is not received, the Lead Agency will not process orders for new cards or load new products on existing cards until full payment is received. For an order to be fulfilled by the first day of the month, the order must be placed and the payment received by the Lead Agency:

- a. no later than the 1st day of the preceding month for a card order; and
- b. no later than the 20th day of the preceding month for a product order for loading on already issued cards.

The acceptable method of payment (check or credit card) shall be determined by the Lead Agency.

### **5. Ineffective Payment; Card Block and Fees.**

If a payment is not honored due to non-sufficient funds (NSF) or if for any reason a payment is negated or reversed, the Lead Agency may:

- a. assess any late payment, NSF and collection fees to the maximum amount permitted by law;

- b. block the Business Cards issued to the Named Business Account, rendering them ineffective for use by the cardholders, until such time as the Named Business Account pays the full amount due, including any late payment, NSF and collection fees, in a manner acceptable to the Lead Agency; and
- c. suspend or terminate access rights to the Named Business Account's secured area of the website.

The Named Business Account agrees to pay to the Lead Agency any court costs, reasonable attorney fees and/or collection fees incurred in collecting amounts due from the Business Account.

#### **6. Delivery and Ownership of Business Cards.**

Upon actual or constructive receipt of the ORCA Business Cards it has ordered, the Named Business Account shall become the owner of the ORCA Business Cards. The named Business Account shall be deemed to have constructively received all ordered ORCA Business Cards unless it notifies the Lead Agency of any non-delivery or incorrect delivery within thirty (30) days after the order was placed. If the Named Business Account notifies the Lead Agency that it has not received the ordered cards, the Lead Agency will ship a replacement order. If the Named Business Account subsequently receives the cards reported as missing, the Named Business Account is responsible for returning them to the Lead Agency.

#### **7. Distribution and Use of Business Cards.**

- a. The Named Business Account is responsible for distributing its Business Cards for use by its eligible cardholders. The Named Business Account remains the owner of all Business Cards it distributes but recognizes that a cardholder may also purchase and load his/her own individual ORCA products on a Business Card. The Named Business Account shall require, as a condition of receiving a Business Card, that the Cardholder sign written Cardholder Rules of Use that must include:
  - 1. a prohibition on the sale or transfer of the Business Card;
  - 2. notice that the Cardholder is required to pay any difference between a required fare and the value of the fare product loaded onto the Business Card;
  - 3. notice that any products purchased by the Cardholder with his/her own funds and loaded on the Business Card, including but not limited to the e-purse, will become the property of the Named Business Account and any subsequent refund to the Cardholder would be the responsibility of the Named Business Account in accordance with its refund policy. Individuals are encouraged to purchase an individual card if they have concerns about refund policies.
  - 4. notice that the ORCA System will record data each time the cardholder presents a Business Card to an ORCA device to prove fare payment, to load a product on it or to review the amount and type of product on it. Such data will include but not be limited to the date, time and bus route or other location related to the card being presented. Such data is owned by the ORCA Agencies but accessible to the ORCA System contractor(s) that operate it, the Named Business Account, and the ORCA Agencies.

The Named Business Account understands and agrees, however, that it is solely responsible for implementation and enforcement of the Cardholder Rules of Use. A sample Cardholder Rules of Use is provided in Attachment 2.

- b. If an individual Cardholder opts to register one of the Business Cards issued to the Named Business Account, any personally identifying information provided to the ORCA System will not be accessible by the Named Business Account. If the Named Business Account collects any

personally identifying information about individuals to whom it has distributed Business Cards, the Named Business Account is solely responsible for its collection, use, storage and disclosure of such information.

#### **8. Cardholder Privileges.**

The Named Business Account understands and agrees that, although it remains the owner of ORCA Business Cards after distribution, the Cardholder has the following privileges in connection with the use of an ORCA Business Card.

- a. The Cardholder may present an ORCA Business Card, loaded with a valid, applicable Business Choice product, to an ORCA fare transaction processor as proof of payment of all or a portion of a required fare on transportation service operated by one or more of the ORCA Agencies. (Provided, however, a Business Choice product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a cardholder will be required to make other payment to the extent a fare is not covered by a Business Choice product.
- b. The Cardholder may individually purchase ORCA products and load them on the Business Card in addition to whatever ORCA products have been loaded by the Named Business Account.
- c. The Cardholder may register his/her name and other contact information with the ORCA System and link such personal information to the serial number of the Business Card provided to him/her. Such registration does not give the Cardholder any ownership rights in the card but does give the Cardholder the right to access the ORCA cardholder website to view the card's transaction history and current stored value and to modify travel zone preferences.

#### **9. Risk of Loss.**

The Named Business Account is responsible for the storage, distribution and use of the ORCA Business Cards issued to it. The Named Business Account bears the sole risk of any loss, damage, theft or unauthorized use of one of its cards, whether such card was held in its inventory or had been distributed for use. The Business Account is responsible for the cost of any use of its Business Cards until the effective date of a "card block" that may be implemented by the Named Business Account as provided below.

#### **10. Blocking Cards and Requests to Restore Products.**

In the event a Business Card is determined to be lost or stolen or if a cardholder is determined by the Named Business Account to be no longer eligible to use the card, the Named Business Account may block the further use of the subject card by using the blocking function available on the Business Account website. If the Named Business Account blocks a card as lost or stolen, a replacement card will be created and shipped to the Named Business Account in approximately seven (7) business days subject to the then-applicable charge for new cards. The replacement card will be loaded with the unexpired monthly pass product, if any, that had been on the lost or stolen card. An e-purse on a blocked card will be restored on the replacement card in approximately ten (10) days. The e-purse amount restored will be that which remained on the lost or stolen card at the time the block took effect. The ORCA Agencies are not responsible for any use of the e-purse product prior to the card block taking effect.

#### **11. All Sales Final.**

The Named Business Account understands and agrees that its purchases of ORCA Business Cards and Business Choice products loaded on such cards are final and it is not entitled to any refunds. Provided, however, the Named Business Account may request a refund of the e-purse value remaining on a Business Card if the card is surrendered by the Named Business Account to the Lead Agency. Upon surrender of the subject Business Card, the card shall be blocked and the refund processed approximately ten (10) days later to allow any pre-block transactions to clear. A processing fee of ten dollars (\$10) shall be payable by the Named Business Account to the Lead Agency for each such e-purse refund that is processed. The Named Business Account, not the Lead Agency, is responsible for the refunding of such e-purse value, if any, to the individual Cardholder to whom the Business Card had been distributed.

## **12. Agency Blocking and Confiscation of Business Cards.**

The Lead Agency may block any of the Named Business Account's Business Cards or products at the request of the Named Business Account or at the sole discretion of the Lead Agency if: (a) a payment is not honored due to non-sufficient funds (NSF) or if for any reason a payment is negated or reversed; or (b) it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder. The Lead Agency or any ORCA Agency may, but is not required, to confiscate a Business Card and/or block any of the Named Business Account's Business Cards or Products, at the request of the Business Account or at the discretion of the Lead Agency, if it is suspected that a card has been altered, duplicated, counterfeited, stolen or used by an ineligible Cardholder.

## **13. Card Replacement.**

The Named Business Account is responsible for ordering and paying for any new cards needed to replace Business Cards that for any reason cease to be available or suitable for use by the Cardholders under the program of the Named Business Account, including but not limited to, if the unavailability or unsuitability is caused by damage, abuse, loss, theft and end of useful life. Provided, however, if a Business Card malfunctions within twelve (12) months after it was delivered to the Named Business Account, it shall be replaced by the Lead Agency without additional charge to the Named Business Account if the malfunction was caused by a defect in design, material or workmanship and was not caused by misuse, an intentional act, negligence or damage, reasonable wear and tear excepted. The Named Business Account understands and agrees that to avoid the disruption and inconvenience caused by sporadic failures as its cards are used, it must plan for replacement of its Business Cards on a regular basis. As a condition of continuing under the Business Choice Program, the Business Account agrees that: (a) it will retire all of its ORCA Business Cards at a some time within four years after they are issued by the Lead Agency to the Named Business Account; and (b) purchase replacement Business Cards at the then-applicable rate.

## **14. Business Account Website.**

- a. The Business Account website is the primary means by which the Named Business Account shall purchase ORCA Business Cards and Business Choice products, manage its Business Cards and obtain information about the use of said cards. As a condition of participation in Business Choice Program, the Named Business Account agrees that it will use the Business Account website when it is available and that each access and use of said website shall be subject to the Terms of Use and Privacy Statement that are in effect and posted on the Business Account website at the time of such access and use.
- b. The Named Business Account understands and agrees that uninterrupted access to and use of the Business Account website is not guaranteed and agrees that it will contact its representative at the Lead Agency by email or telephone if the website is not available.
- c. The Named Business Account understands and agrees that it is responsible for complying with any security standards specified by the Lead Agency which include but are not limited to controls on issuing, managing and rescinding access rights and passwords to the secured website pages for the Named Business Account.

## **15. Information Provided by the Agencies and the ORCA System.**

- a. The Named Business Account understands and agrees that the data, reports or any information provided to it by the Lead Agency or the other ORCA Agencies, via this website or otherwise, is and remains the sole property of the ORCA Agencies and nothing shall be construed as a transfer or grant of any copyright or other property interest in such data, reports or information. The ORCA Agencies hereby grant to the Named Business Account a non-exclusive license to use any data, reports or information provided by the ORCA Agencies, via this website or

otherwise, for any lawful purpose related to the administration of the transportation program of the Named Business Account.

- b. The ORCA System will record data each time that an ORCA Business Card is presented to an ORCA device for fare payment and to load a product. Such transaction data includes but is not limited to the date, time and location (or bus route) of the transaction. The Named Business Account may routinely access such transaction data related to its Business Cards to the extent provided via the Business Account website. Said website and its reports do not provide the Business Account Business Card transaction data linked to card serial numbers. The Primary Contact Person of the Named Business Account may submit a written request to the Lead Agency for the card number linked to a specific transaction. The written request shall include the following:
  - 1. the date, time and other known details about the specific transaction for which a card serial number is being requested; and
  - 2. the signature of the Primary Contact Person.

If the Lead Agency determines that the subject transaction(s) is linked to a Business Card issued to the Named Business Account, the Lead Agency will provide the Named Business Account with the card serial number linked to the requested transaction(s). The Named Business Account agrees that it will use such card serial number information only for purposes of enforcing its Rules of Use or other lawful business purposes.

#### **16. Public Records**

The Named Business Account understands and agrees that all records related to its participation in the Business Choice Program and the ORCA System are public records under the Washington Public Records Act (Chapter 42.56 RCW) ("Act"), including but not limited to: (a) this Agreement and the sales activity hereunder; (b) the orders, communications, and any other information provided by the Named Business Account to the Lead Agency, the other ORCA Agencies or the ORCA System, whether provided via this website or otherwise and whether provided in hard copy or electronic form; (c) any communications, responses, requests, reports or information of any kind provided to the Named Business Account from the Lead Agency, the other ORCA Agencies or the ORCA System; and (d) all data, reports and information of any kind related to the loading of products on, and the use of, the Business Cards issued to the Named Business Account. As public records, these records will be made available for public inspection and copying upon request, unless the Lead Agency determines they are exempt from disclosure.

#### **17. Unauthorized Use of ORCA Trademarks Prohibited.**

The Named Business Account understands and agrees that the "ORCA" name and logos are trademarked and that it will not copy or use them and any other trade names, trade marks, service marks, logos, domain names, and other distinctive features or intellectual property of the ORCA Agencies without written permission.

#### **18. Cards Accepted on Transportation Services; No Guarantee of Transportation Service.**

- a. Subject to all applicable policies and restrictions, the ORCA Agencies will accept an ORCA Business Card, loaded with a valid, applicable Business Choice product, when presented to an ORCA fare transaction processor as proof of payment of all or a portion of a required fare on regularly scheduled transportation service operated by one or more of the ORCA Agencies. (Provided, however, a Business Choice product that is not sufficient to fully pay a fare will not be accepted as partial payment by the Washington State Ferries.) In all cases, a cardholder will be required to make other payment to the extent a fare is not covered by a Business Choice product.

- b. The Named Business Account understands and agrees that the Agreement, and its purchase of Business Cards and Business Choice products, do not constitute a contract for transportation service and the ORCA Agencies have no obligation to the Named Business Account or any other party to provide any particular level, frequency or routing of transportation service.

#### **19. Term and Termination.**

- a. This Agreement shall take effect upon its signing by the Lead Agency and the Named Business Account and shall remain in effect unless terminated in accordance with this Agreement.
- b. The Lead Agency may at any time terminate the Agreement if the Named Business Account fails to make timely and effective payment of all amounts due, or otherwise breaches the Agreement, or acts in manner indicating that it intends to not comply, or is unable to comply, with the Agreement. Such termination shall take effect immediately upon the Lead Agency sending email notice to the last known email address for the last known primary contact person of the Named Business Account. In the event of such a termination, the Lead Agency may immediately terminate the website access privileges of the Named Business Account, block the Business Cards issued to the Named Business Account and decline to accept and fulfill any pending or new orders from the Named Business Account.
- c. Either the Named Business Account or the Lead Agency may terminate the Agreement without cause and for its own convenience by sending the other party written or email notice at least thirty (30) days in advance of the effective date of the termination. Upon receipt of a notice of termination for convenience from the Named Business Account, the Lead Agency may, at its sole discretion, waive the advance notice period and immediately terminate the website access privileges of the Named Business Account, block the Business Cards issued to the Named Business Account and decline to accept and fulfill any pending or new orders from the Named Business Account.
- d. Notwithstanding any termination of the Agreement, the Named Business Account shall remain liable to satisfy and comply with all of its obligations under this Agreement and at law with regard to, or arising out of, any orders submitted or any of its acts or omissions occurring prior to the effective date of the termination, including but not limited to paying all amounts due or incurred prior to the effective date of the termination and any fees, charges, collection costs or other costs arising from a failure to make timely and effective payment.

#### **20. No Warranties**

The Named Business Account expressly understands and agrees as follows:

- a. The Lead Agency and each of the other ORCA Agencies make no warranties or other assurances of any nature regarding the "ORCA Services," including the ORCA Business Cards, the Business Choice products, the Named Business Account's access to and use of the ORCA websites, reports and other information or other thing or service provided under the agreement. All ORCA Services are provided on an "as is", "as available" and "with all faults" basis. Any use of ORCA Services, including but not limited to any material downloaded or otherwise obtained through the use of the ORCA websites, is done at the Named Business Account's sole discretion and risk.
- b. To the extent permitted by law, the Lead Agency and each of the other ORCA Agencies disclaims all warranties and duties of every kind, express, implied or statutory, including but not limited to any implied warranties of merchantability or fitness for a particular purpose or created by trade usage, course of dealing or course of performance, any warranties of quiet enjoyment

or non-infringement and any warranties of workmanlike effort or lack of negligence. By way of example and not limitation, the Lead Agency and each of the other ORCA Agencies disclaim any warranty and do not represent or warrant to the Named Business Account that:

1. its use of any ORCA Services provided under this Agreement will meet its requirements;
2. its use of the ORCA Services will be uninterrupted, timely, secure or free from error; and
3. any information obtained by the Named Business Account as a result of the use of the ORCA Services will be accurate or reliable.

## **21. Notices**

a. Any notice to be provided by one party to another shall be in writing and sent by either email or regular mail.

b. Notices to the Lead Agency shall be sent to the following:

Position Title: King County Lead Agency Representative

Email: business.leadagent@kingcounty.gov

Street Address: 201 S. Jackson St. KSC-TR-0412

City/State/Zip: Seattle, WA 98104

Telephone: 206-263-3444

c. Notices to the Named Business Account, including notice of a change in the terms of this Agreement, shall be sent to the person and location identified as the Primary Contact Person on the Orcacard.biz website.

## **22. Force Majeure.**

The ORCA Agencies and each of them shall be relieved of any obligations under this Agreement to the extent they are rendered unable to perform or comply with such obligations as a direct or indirect result of a force majeure event or any other circumstance not within such party's control, including but not limited to acts of nature, acts of civil or military authorities, terrorism, fire or water damage, accidents, labor disputes or actions, shutdowns for purpose of emergency repairs, or industrial, civil or public disturbances.

## **23. Application of Agency Fares and Other Policies.**

The purchase, distribution and use of Business Cards by the Named Business Account and its Cardholders, and access to and use of the ORCA websites, shall be subject to all applicable federal, state and local law, regulations, ordinances, codes and policies, including but not limited to the fares, transfer rules, code of conduct and other operating policies and procedures established by each of the ORCA Agencies for their transportation services.

## **24. Prohibited Discrimination**

The Named Business Account shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the administration of its transportation program, the provision of ORCA Business Cards and ORCA Products or the performance of any acts under this Agreement. The Named Business Account shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination.

## **25. Compliance with Applicable Law.**

The Named Business Account shall be solely responsible for compliance with all applicable federal, state and local laws, regulations, resolutions and ordinances, including but not limited to any



provisions relating to the Named Business Account's provision of compensation, benefits or services to employees or others (e.g. including but not limited to transportation fringe benefits) and any reporting, tax withholding or other obligations related thereto. The Named Business Account expressly acknowledges and agrees that it has not relied on any representations or statements by the ORCA Agencies and will not rely on them to provide any legal, accounting, tax or other advice with regard to the Named Business Account's provision of compensation, benefits or services to employees or others (e.g. including but not limited to transportation fringe benefits) and any reporting, withholding or other obligations related thereto.

## **26. Legal Relations**

- a. *No Partnership, Agency or Employment Relationship Formed.* The Named Business Account and the ORCA Agencies are independent parties and nothing in this Agreement shall be construed as creating any joint venture, partnership, agency or employment relationship between and among them or their respective employees. Without limiting the foregoing, the Named Business Account understands and agrees that none of its employees or agents shall be deemed employees or agent, for any purpose, of any of the ORCA Agencies and the Named Business Account is solely responsible for the acts of its agents and employees and their compensation, wages, withholdings and benefits.
- b. *Limitation on Liability*
  1. The Lead Agency and each ORCA Agency shall not be liable for, and the Named Business Account holds each harmless from, any loss or damage arising out of or resulting from:
    - (a) any reliance placed by the Named Business Account on the completeness, accuracy or existence of any information provided under this Agreement;
    - (b) any changes which an ORCA Agency may make to the ORCA Services, or for any permanent or temporary cessation in the provision of the services (or any features within the services);
    - (c) the deletion of, corruption of, or failure to store, any information transmitted to or generated by the Named Business Account's use of the ORCA Services or the use of said account's ORCA Business Cards;
    - (d) failure of the Named Business Account to provide the Lead Agency with accurate information; and
    - (e) failure by the Named Business Account to keep password or account details secure and confidential.
  2. The Lead Agency and each other ORCA Agency shall not be liable for, and the Named Business Account hereby holds each harmless from, any loss of use, loss of time, loss of profits, loss of privacy, loss of data, loss of goodwill, inconvenience, commercial loss, loss of anticipated savings, wasted management time or labor, or any special, consequential, general, indirect, incidental, or punitive damages or that are for failure to meet any duty (including without limitation any duty of lack of negligence or workmanlike effort), when such damages arise out of or are related to this agreement or the ORCA Services, even if anyone in any of the ORCA Agencies has been advised of the possibility of such damages and even in the event of a tort (including negligence, strict or product liability) or violation of contract or policy.

3. If anyone in any of the ORCA Agencies breaches any duty or agreement relating to the ORCA Services, the exclusive, aggregate remedy against the Lead Agency and each other ORCA Agency will be, at the option of the ORCA Agencies: (a) correction, substitution or replacement of all or part of the ORCA Services giving rise to the breach, or (b) a refund of the amount paid by the Named Business Account for the ORCA Service causing the damage, which amount will not exceed the damages (other than those excluded above) actually incurred by the Named Business Account in reasonable reliance.
  4. The damage exclusions and limitations on liability in the Agreement shall apply even if any remedy fails for its essential purpose.
- c. *No Waiver.* The Named Business Account agrees that if the Lead Agency does not exercise or enforce any legal right or remedy which is contained in the Agreement or under applicable law, this will not be taken to be deemed to be a waiver or modification of the Lead Agency's rights and remedies and that those rights or remedies will still be available to Lead Agency.
  - d. *Governing Law and Forum.* This Agreement and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America without regard to its conflict of laws provisions. The exclusive jurisdiction and venue for conducting any legal actions arising under this Agreement shall reside in either the Federal District Court or the State of Washington Superior Court, as applicable, that is located in the county in which the Lead Agency's primary administrative office is located. The Named Business Account hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the ORCA Agencies in other fora.
  - e. *Attorneys' Fees and Costs.* In the event of litigation between the parties related to Sections 20 and 26 of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and reasonable litigation expenses and costs.
  - f. *Survival.* Sections 6, 10, 12, 13, 15, 17, 18, 21, 26 and 27 shall survive and remain effective notwithstanding any termination of this Agreement.

## **27. Successors and Assigns**

This Agreement and all terms, provisions, conditions and covenants hereof shall be binding upon the parties hereto and their respective successors and assigns. Provided, however, the Named Business Account may not assign or delegate the duties performed under this Agreement without written agreement by the Lead Agency.

## **28. Entire Agreement and Written Amendments**

This Agreement constitutes the entire agreement between the Named Business Account and the Lead Agency, on behalf of all ORCA Agencies, related to the Named Business Account's use of and access to ORCA Services (but excluding any services which Lead Agency may provide under a separate written agreement), and completely replaces and supersedes any prior oral or written representations or agreements in relation to fare media consignment and sales or to the ORCA Services. No oral agreements or modifications will be binding on the parties and any changes shall be effective only upon a written amendment being signed by the parties.

**29. Severability**

In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable or invalid then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Agreement which shall remain in full force and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Agreement to any party.

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by:

Company Name:

Company Tax ID#:

Company Street Address:

Company City State and Zip:

Company Phone Number:

Signature\_\_\_\_\_

Name (print) \_\_\_\_\_

Title \_\_\_\_\_

E-mail \_\_\_\_\_

**ORCA Lead Agency** King County Metro Transit

Metro needs the following information to activate your ORCA business account. Please indicate your payment method for ORCA Business Choice products:

VISA or Mastercard (credit card when ordering)

Company check to be mailed in (as instructed on website)

The payment method can be changed at your request.

**ATTACHMENT 1**  
**Prices effective November 1, 2009**

**ORCA Product List**

**E-Purse**

E-purse is transportation value stored on an ORCA card and used like cash to pay fare. The minimum value you can add to an E-purse is \$5. The maximum value that can be stored in an E-purse is \$300.

**Regional Pass/PugetPass**

A regional pass allows travel on all transit services in the region for a specified period of time. Passes are valid on Community Transit, Everett Transit, King County Metro Transit, Kitsap Transit, Pierce Transit and Sound Transit.

A regional pass is valid for payment of trip fares up to the value of the pass—available values are shown below.

**Monthly PugetPasses**

<b>Pass</b>	<b>Purchase Price</b>
\$.50 PugetPass	\$18.00
\$.75 PugetPass	\$27.00
\$1.00 PugetPass	\$36.00
\$1.25 PugetPass	\$45.00
\$1.50 PugetPass	\$54.00
\$1.75 PugetPass	\$63.00
\$2.00 PugetPass	\$72.00
\$2.25 PugetPass	\$81.00
\$2.50 PugetPass	\$90.00
\$2.75 PugetPass	\$99.00
\$3.00 PugetPass	\$108.00
\$3.25 PugetPass	\$117.00
\$3.50 PugetPass	\$126.00
\$3.75 PugetPass	\$135.00
\$4.00 PugetPass	\$144.00
\$4.25 PugetPass	\$153.00
\$4.50 PugetPass	\$162.00
\$4.75 PugetPass	\$171.00

## Agency Pass

Agency passes are accepted as payment on designated systems only as listed below.

## Kitsap Transit

Pass	Purchase Price
Kitsap Transit Full Fare Pass	\$50.00
Kitsap Transit Reduced Fare Pass*	\$25.00
Kitsap Transit Worker/Driver Full Fare Pass	\$75.00

## King County Metro Transit

Pass	Purchase Price
Metro Monthly Reduced Fare Pass*	\$9.00
Metro Monthly Vanpool One Zone Pass	\$72.00
Metro Monthly Vanpool Two Zone Pass	\$90.00
Metro Annual Reduced Fare Pass*	\$99.00

## Pierce Transit

Pass	Purchase Price
Pierce Transit Summer Youth Pass	\$36.00

## Washington State Ferries

Pass	Purchase Price
WSF Mukilteo-Clinton Monthly Pass	\$52.50
WSF Vashon Island Monthly Pass**	\$57.00
WSF Fauntleroy-Southworth Monthly Pass	\$67.85
WSF Central Sound Monthly Pass	\$88.35
WSF Port Townsend-Keystone Monthly Pass	\$67.85

\* Requires a Regional Reduced Fare Permit

\*\* WSF service only; for riders wanting to ride the King County Water Taxi/Vashon passenger-only ferry, buy a \$3.75 PugetPass

**ATTACHMENT 2**  
**SAMPLE - ORCA BUSINESS CARDHOLDER RULES OF USE**

As a Business Account Cardholder, I agree to the following:

1. I will use my ORCA Business Card for my own transportation only. I will not transfer my ORCA Business Card to any other person. I understand that my ORCA Business Card and any products will be blocked from further use if I misuse this benefit.
2. I will keep my ORCA Business Card secure and in good condition. I will immediately report a lost, stolen, or damaged ORCA Business Card to my company Transportation Coordinator. I understand a lost ORCA Business Card may be replaced at the discretion of my employer at a charge of \$\_\_\_\_\_. A defective ORCA Business Card will be replaced free of charge.
3. I will return my ORCA Business Card upon request or when I leave my employment with this company. If I do not return my ORCA Business Card, I understand that it may be blocked for further use on transportation services provided me by my employer.
4. I understand that the ORCA Business Card containing Business Choice products is valid to use with the following service providers: King County Metro Transit, Community Transit, Pierce Transit, Everett Transit, Kitsap Transit, Sound Transit and the Washington State Ferry System, up to the amount loaded on the card or with the appropriate monthly pass.
5. I understand that I am responsible to pay additional fares required for services not covered, or not fully covered, by any employer provided benefit.
6. I understand that any additional ORCA Products I load onto my Business Card become the property of my employer, *and any refund of such products will be made by my employer according to its refund policy.*
7. I understand the ORCA system will record data each time I use my Business Card. Data will include the date, time and location of the card when it is presented. I understand this data is owned by the ORCA Agencies and is accessible to my employer.

I acknowledge the receipt of my ORCA Business Card, and understand and agree to the terms stated above on using the ORCA Business Card.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Printed Name

\_\_\_\_\_  
ORCA Card Serial #

Transportation Coordinator Use Only – ORCA Card returned:

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
ORCA Card Serial #